

PUBLIC WORKS & UTILITIES COMMITTEE

12-0646R

RESOLUTION AUTHORIZING AN AGREEMENT WITH COULOMB  
TECHNOLOGIES INC. FOR THE PURCHASE OF A JUMPSTART  
PROGRAM CHARGEPOINT ELECTRIC VEHICLE CHARGING STATION AT  
NO COST TO THE CITY.

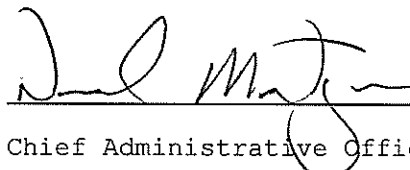
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute  
an agreement, substantially in the form of that on file in the office of the city  
clerk as Public Document No. \_\_\_\_\_, with Coulomb Technologies, Inc. for the  
purchase of a Jumpstart Program ChargePoint Electric Vehicle Charging Station at  
no cost to the City.

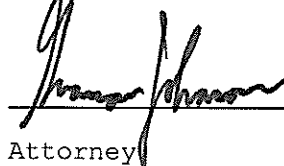
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

STATEMENT OF PURPOSE: This resolution authorizes an agreement with Coulomb Technologies, Inc. for the purchase of a JumpStart Program ChargePoint Electric Vehicle Charging Station at no cost to the city. The city, through its Energy Coordinator, submitted an application to be awarded a free charging station to support alternative fueled vehicles. The city was subsequently awarded the charging station which will be located at the city's Depot parking ramp. The charging station will be available for use by the general public at no charge or a nominal session fee.

## JUMPSTART AGREEMENT

This JumpStart Agreement (this "Agreement") is entered into as of December 17 \_\_, 2012, by and between Coulomb Technologies, Inc., d/b/a ChargePoint ("CTI"), a Delaware corporation, with its principle offices at 1692 Dell Avenue, Campbell, CA 95008 and [ City of Duluth ] ("Customer"), with its principle offices at [ 411 W. 1<sup>st</sup> St. Duluth, MN 55806 ]. CTI and Customer are sometimes referred to individually in this Agreement as, a "Party," and, collectively, as, the "Parties."

1. **Charging Stations.** Customer is being awarded the following charging station (the "Charging Station").

Product Name	Product Description	Product Code	Qty	Unit Price	Total Price
CT2101-GPRS-LOCK-CCR	Dual 208/240-30A & 110 – 15A Bollard with GPRS, locking holster, and credit card reader	CT-2101-GPRS-LOCK-CCR	1	\$0.00	\$0.00

<b>Grand Total:</b>	<b>\$0.00</b>
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As described below, the Charging Stations will come with a one year subscription to the Commercial ChargePoint® Network Service Plan or the Corporate ChargePoint® Service Plan, at no charge to Customer. The Charging Stations are designed to work only when connected to the ChargePoint Network. In the event Customer desires to continue using the Charging Station upon expiration of the plan provided to Customer at no charge, Customer will enter into a subscription to one of the ChargePoint Network Service Plans at CTI's then standard rates. The Charging Station shall be covered by CTI's standard, one-year, parts only warranty. An extended warranty may be purchased by Customer during the period beginning ninety (90) days prior to the expiration of CTI's standard warranty, and ending on the expiration date of such warranty.

2. **Shipment and Delivery.** All shipping, unless otherwise agreed to by the Parties in writing, shall be FOB Coulomb's point of shipment. CTI shall be responsible for all costs of shipping the Charging Station to Customer unless Customer desires expedited shipping, in which case Customer shall be responsible for the costs of shipping. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Customer. In no event shall Coulomb be liable for any costs related to delay in delivery of the Charging

Station. Customer's sole remedy for any material delay in delivery of the Charging Stations shall be cancellation of the order.

**3. Installation.**

(a) Installation, including provisioning, of the Charging Station shall be at Customer's sole cost and expense. Customer agrees to cause the installation of the Charging Station on or prior to January 31, 2013. In the event that the Charging Station has not been installed by such date, CTI reserves the right to reclaim the Charging Station, at Customer's expense. In the event that Customer is having trouble arranging for the installation of the Charging Station, Customer shall contact CTI so that it can assist Customer in obtaining prompt installation of the Charging Station. The Charging Station is not to be removed from its packaging by any person other than the Installer. The Charging Station will be installed in the location set forth in Appendix "A." Customer may use the installer of its choice to install the Charging Station, but must use a CTI authorized party to provision the station on ChargePoint.

**4. Warranty/Limitation of Liability.** (a) **Warranty.** The Charging Station is covered by the terms of CTI's standard, one-year, parts only Warranty (the "Warranty"). A copy of the Warranty is included with this agreement. All applicable warranties with respect to the Charging Station are set forth in the Warranty, and are hereby incorporated by reference into this Agreement.

(b) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 AND IN THE WARRANTY, CTI MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATION, THE CHARGEPOINT NETWORK CORPORATE SERVICE PLAN OR THE CHARGEPOINT NETWORK, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CTI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE CHARGING STATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CTI DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE CHARGING STATION.

(c) **Limitation of Liability.** (i) REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CTI BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGING STATION, THE CHARGEPOINT NETWORK, ANY CHARGEPOINT NETWORK SERVICES, OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY YOU NOT SPECIFICALLY SET FORTH IN THIS ADDENDUM. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.

(ii) YOUR SOLE REMEDY FOR ANY BREACH BY CTI OF ITS OBLIGATIONS OR WARRANTIES UNDER THIS AGREEMENT SHALL BE LIMITED TO, AT CTI'S OPTION, REPAIR OR REPLACEMENT OF THE CHARGING STATION.

(d) **Warranty Exclusions; Exclusive Remedies.** THE REMEDIES CONTAINED IN SECTION 4 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST CTI WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATIONS, THE CHARGEPOINT NETWORK CORPORATE SERVICE PLAN OR THE CHARGEPOINT NETWORK.

**5. Network Access.** As a part of the award, Customer will receive for use with the Charging Station a free, one-year subscription to, at your option, the Commercial ChargePoint® Service Plan or the Corporate ChargePoint® Service Plan; provided that, in order to access such plan, Customer must execute a copy of the CTI Master Services Subscription Agreement. CTI offers various other service plans, as well as other services, such as billing services, which may be accessed through the ChargePoint Network. Customer's use of any such service is subject to CTI's standard prices, terms and conditions.

**6. No Amendment or Modification.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed or electronically accepted by the party against whom the amendment, modification or waiver is to be asserted.

**7. Waiver.** CTI's failure at any time to require Customer's performance of any obligation under this Agreement will in no way affect the full right to require such performance at any time thereafter. CTI's waiver of a breach of any provision of this Agreement will not constitute a waiver of the provision itself. CTI's failure to exercise any of its rights provided in this Agreement will not constitute a waiver of such rights. No waiver will be effective unless in writing and signed by a CTI authorized representative. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.

**8. Applicable law.** This Agreement will be construed, and performance will be determined, according to the laws of the State of Minnesota without reference to such state's principles of conflicts of law. **9. Waiver of Jury Trial.** Customer and CTI each hereby waive any right to jury trial in connection with any action or litigation arising out of this Agreement.

**10. Severability.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Customer or CTI will to any extent be determined by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, Customer and CTI or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

**11. Assignment.** Customer may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CTI.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

**COULOMB TECHNOLOGIES, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AWARDEE:**

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX A - CHARGING STATION LOCATION

Station #1 -

City of Duluth's Depot Parking Ramp